

ASSEMBLY BILL

No. 130

Introduced by Assembly Member Jeffries

January 20, 2009

An act to amend Section 530.5 of the Penal Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 130, as introduced, Jeffries. Identity theft.

Existing law establishes various offenses in connection with the unlawful acquisition or use of personal identifying information. Some of these offenses are punishable only as misdemeanors, however most may be prosecuted as misdemeanors or as felonies punishable by imprisonment in the state prison for 16 months or 2 or 3 years.

This bill would provide that a 2nd or subsequent commission of any of these offenses would be punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years.

By providing that certain misdemeanors are punishable as a felony, thereby increasing the duties of local prosecutors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(b) In any case in which a person willfully obtains personal identifying information of another person, uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

(c) (1) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment.

~~(2) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and who has previously been convicted of a violation of this section, upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.~~

~~(3)~~

(2) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of 10 or more other persons is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

1 (d) (1) Every person who, with the intent to defraud, sells,
2 transfers, or conveys the personal identifying information, as
3 defined in subdivision (b) of Section 530.55, of another person is
4 guilty of a public offense, and upon conviction therefor, shall be
5 punished by a fine, by imprisonment in a county jail not to exceed
6 one year, or by both a fine and imprisonment, or by imprisonment
7 in the state prison.

8 (2) Every person who, with actual knowledge that the personal
9 identifying information, as defined in subdivision (b) of Section
10 530.55, of a specific person will be used to commit a violation of
11 subdivision (a), sells, transfers, or conveys that same personal
12 identifying information is guilty of a public offense, and upon
13 conviction therefor, shall be punished by a fine, by imprisonment
14 in the state prison, or by both a fine and imprisonment.

15 (e) Every person who commits mail theft, as defined in Section
16 1708 of Title 18 of the United States Code, is guilty of a public
17 offense, and upon conviction therefor shall be punished by a fine,
18 by imprisonment in a county jail not to exceed one year, or by both
19 a fine and imprisonment. Prosecution under this subdivision shall
20 not limit or preclude prosecution under any other provision of law,
21 including, but not limited to, subdivisions (a) to (c), inclusive, of
22 this section.

23 (f) *A second or subsequent violation of this section shall be*
24 *punished by a fine, by imprisonment in a county jail not to exceed*
25 *one year, or by both a fine and imprisonment, or by imprisonment*
26 *in the state prison for two, three, or four years.*

27 (g) An interactive computer service or access software provider,
28 as defined in subsection (f) of Section 230 of Title 47 of the United
29 States Code, shall not be liable under this section unless the service
30 or provider acquires, transfers, sells, conveys, or retains possession
31 of personal information with the intent to defraud.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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